STATE OF MICHIGAN

COURT OF APPEALS

LESTER J. EFF and JACQUOLYN M. EFF,

Plaintiffs-Appellants,

v

ROBERT C. SLUSHER, and ANN M. SLUSHER, KYLE CRANOR, d/b/a KYLE CRANOR REALTY, LYNETTE M. VANCAMP AND BINNS REALTY,

Defendants-Appellees.

UNPUBLISHED
May 19, 2000

No. 214043
Lenawee Circuit Court
LC No. 96-007085-CH

Before: Gribbs, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's orders granting summary disposition of plaintiffs' fraud, silent omission, innocent misrepresentation and violation of the Michigan Consumer Protection Act claims.[1] We affirm.

This case arises from the sale of a vacant, sixteen acre parcel of property. In April 1992, the sellers of the property, defendants, Robert C. Slusher and Ann M. Slusher, listed the lot with defendant, Kyle Cranor, d/b/a Kyle Cranor Realty. In the fall of that same year, plaintiff, Jacquolyn Eff, contacted defendant, Binns Realty, and spoke with its agent, defendant VanCamp, regarding her and her husband's interest in purchasing a home or property on which they could build. Thereafter, defendant VanCamp showed several properties to plaintiffs. In late 1992, defendant VanCamp contacted defendant Cranor Realty to inquire as to whether the Slushers' property was still for sale. She spoke with defendant Cranor Realty's agent, Charles Ruhl, regarding the details of the water well easement on the property. According to defendant VanCamp, Ruhl told her there was a verbal agreement regarding a neighboring landowner's use of the Slushers' well, but that nothing was in writing. Ruhl denied providing such information. Defendant VanCamp obtained a copy of the "MLS grid listing" for the Slushers' property, which included the statement, "Approx. 150' well on property supplies to house across street and house to south. Users of well help maintain well." It is undisputed that defendant

VanCamp gave a copy of that listing to plaintiffs, at the bottom of which she wrote, "According to the listing agent, there is only a verbal agreement on other home's use of well. Nothing in writing."

Following submission of several purchase agreements, plaintiffs were provided a commitment for title insurance by First American Title Insurance Company. In its exceptions to coverage, the commitment specifically listed one easement that was recorded with the register of deeds in 1973. That easement granted neighboring property owners, Dennis L. DeMille and Donna DeMille, the right to draw water from the well located on the property at issue. It also specified that the DeMilles are to pay one-third of certain costs of maintaining and repairing the well. On May 22, 1993, the parties closed on the property. The title insurance policy that plaintiffs received subsequent to closing listed the same easement to the DeMilles that was referenced in the commitment. In July 1994, plaintiffs contracted for service on their well and sought partial payment for the repairs from the DeMilles. The DeMilles objected to the extent and cost of the repairs and informed plaintiffs that another property owner across the road also had a dominant interest in the well easement. Thereafter, plaintiffs discovered that a second well easement had been granted to a second neighboring property owner. That second easement had been recorded with the register of deeds in 1972. At some point prior to filing the present suit, plaintiffs settled a claim against First American Title Insurance Company for its failure to disclose the presence of the second easement. Plaintiffs have been paid the full $8,100 amount of that settlement.

On appeal, plaintiffs first argue that the trial court erred in granting summary disposition of its fraud, silent omission and misrepresentation claims on the basis that defendants did not owe plaintiffs a duty to disclose the true nature of the second easement to plaintiffs. We disagree. We review a trial court's grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

In order to prove fraud or silent fraud, the plaintiff must prove: (1) the defendant made a material representation; (2) the representation was false; (3) the defendant knew or should have known it was false at the time it was made; (4) the defendant made the representation, intending the plaintiff to act upon it; and (5) the plaintiff acted in reliance on it and suffered damages as a result. *Novak v Nationwide Mutual Ins Co*, 235 Mich App 675, 688; 599 NW2d 546 (1999); *McMullen v Joldersma*, 174 Mich App 207, 213; 435 NW2d 428 (1988). The failure to divulge a material fact, which a party in good faith is duty-bound to disclose, may serve as the false representation necessary to support an action for fraudulent concealment. *Lorenzo v Noel*, 206 Mich App 682, 684; 522 NW2d 724 (1994); *McMullen, supra* at 213.

In the present case, defendants VanCamp, Binns Realty and Cranor Realty were acting as agents of the sellers. *Andrie v Chrystal-Anderson & Associates Realtors*, 187 Mich App 333, 335; 466 NW2d 393 (1991). As such, those defendants were not duty-bound to disclose facts that the buyers could have discovered through reasonable inquiry. *McMullen, supra* at 212-213. It is undisputed that the second easement had been validly recorded with the register of deeds in 1972. Consequently, the existence of that express easement was a matter of public record and was readily discoverable.

Moreover, plaintiffs' silent omission and fraud claims against defendants VanCamp, Binns Realty and Cranor Realty fail as a matter of law because plaintiffs cannot be said to have reasonably relied on any alleged misrepresentation by those defendants. A plaintiff's reliance must be reasonable to support a fraud claim. *Novak, supra* at 690-691; *Nieves v Bell Industries, Inc*, 204 Mich App 459, 464; 517 NW2d 235 (1994). Plaintiffs acknowledged during depositions that they consulted an attorney during the purchasing process and admitted they knew, prior to purchasing the property, that two separate neighboring land owners made use of the well on the property in question. Given that knowledge, it cannot be said that plaintiffs reasonably relied on the assumption that there was only one valid easement upon the property. Moreover, the recording of the second easement, itself, provided plaintiffs notice of its existence and terms. See MCL 565.25(4); MSA 26.543(1); *McMutry v Smith*, 320 Mich 304, 306-307; 30 NW2d 880 (1948).

Plaintiffs' fraud claims against defendants Robert and Ann Slusher fail as plaintiffs have not introduced evidence that those defendants made any express representation regarding the easements. *Novak, supra* at 688. Moreover, there is no evidence suggesting defendants Robert and Ann Slusher had any knowledge of the easement that could serve as the basis for a silent fraud claim. *Id*.; *McMullen, supra* at 213. Plaintiffs' unintentional misrepresentation claims are also meritless. A claim of innocent misrepresentation is shown if a party to a contract detrimentally relies on a false representation in such a manner that the injury suffered by that party inures to the benefit of the party who made the representation. *Novak, supra* at 688. As agents of the sellers, defendants VanCamp, Binns Realty and Cranor Realty, did not have privity of contract with plaintiffs and, thus, cannot be liable under this theory. *Id*. Defendants Robert and Ann Slusher, likewise, cannot be liable given that plaintiffs do not claim that they made any representation regarding the easements. Furthermore, plaintiffs' notice of both easements prior to purchasing the property precludes a finding that plaintiffs reasonably relied on any unintentional misrepresentation. *Novak, supra* at 690.

Plaintiffs argue next that the trial court erred in granting summary disposition of its claims under the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq*.; MSA 19.418(1) *et seq*. We disagree. The MCPA prohibits the use of unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce. MCL 445.903(1); MSA 19.418(3)(1); *Zine v Chrysler Corp*, 236 Mich App 261, 270-271; 600 NW2d 384 (1999). The MCPA is remedial and, thus, should be liberally construed to achieve its goal of prohibiting unfair practices in trade and commerce. *Price v Long Realty Co*, 199 Mich App 461, 471; 502 NW2d 337 (1993). The MCPA applies to the sale of real property. *Id*. at 470; see *Attorney General v Diamond Mortgage Co*, 414 Mich 603, 617; 327 NW2d 805 (1982). In the present case, there is no merit to plaintiffs claim that defendants' failure to disclose the existence of the second easement was deceptive. The second easement was recorded with the register of deeds and, thus, could have been readily discovered by plaintiffs. Therefore, defendants' conduct was not deceptive.

Given our disposition of those issues, it is unnecessary for us to review plaintiffs' final argument, challenging the propriety of the trial court's ruling barring plaintiffs' recovery of the first $8,100 of their claims.

Affirmed.

/s/ Roman S. Gribbs
/s/ Joel P. Hoekstra
/s/ Jane E. Markey

[1] Two separate orders granting summary disposition for defendants were entered below, one dismissing the claims against defendants, Robert C. Slusher, Ann M. Slusher and Kyle Cranor, d/b/a Kyle Cranor Realty, and the other dismissing the claims against defendants, Binns Realty and Lynette M. VanCamp.